

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of
Review and Revision of Regulations
for ITFS and MDS services

RM-10586

COMMENTS OF RIOPLEX WIRELESS, LTD.

COMES NOW, Rioplex Wireless, Ltd. (Rioplex) and submits comments to the October 7, 2002, proposal submitted by several organizations in the captioned proceeding (the Proposal).¹ In general, Rioplex comments that the underlying tenet of the Proposal is accurate; regulations applicable to ITFS and MDS should be adjusted in order to remain flexible with a rapidly developing industry. However, Rioplex opposes the bandplan developed within the Proposal. In practice, the suggested bandplan would revoke licensed frequencies from current authorization holders and, in exchange, thrust them into a frequency bazaar with a patchwork of spectrum. The advances that have evolved within the industry would be negated under the Proposal as the foundation upon which the industry has developed would be eliminated.

Rioplex is an entrepreneurial telecommunications company from an expansive area of South Texas. Rioplex has partnered with ITFS licensees throughout its area to ensure that the wireless broadband needs of the region are served. The company also can harness frequencies from MDS licensees to provide South Texas with the latest advancements in 2 GHz broadband two-way technology. Rioplex is familiar with the ITFS/MDS industry and the regulatory landscape within which it operates. An update to the regulatory landscape is needed.

¹ *Wireless Telecommunications Bureau Seeks Comment on Proposal to Revise Multichannel Multipoint Distribution Service and the Instructional Television Fixed Service Rules*, Public Notice, DA 02-2732, Oct. 17, 2002.

REGULATORY STRUCTURE

Rioplex agrees with the Proposal's assertion that a substantial burden is placed upon licensees and the Commission under the current "broadcast-like interference analysis, application and licensing process"² The Proposal refers to numerous Commission rules which should be reviewed and evaluated in light of the burdens placed upon licensees to develop a technologically competitive service using ITFS/MDS frequencies.

One of the paramount burdens faced by licensees is the requirement for site-by-site licensing. The Proposal assesses the reality of current operations accurately in its finding that, "this site-by-site licensing system is too cumbersome and the transaction costs too high to permit competitive businesses to flourish using next generation technology."³ Site-by-site licensing for MDS and ITFS licensees in an era of geographic licensing for 27 MHz, 700 MHz and Personal Communications Service (PCS) licensees demonstrates the need for review of the Commission's rules. The Proposal provides a detailed and accurate discussion of the solution that geographic service area licensing can provide and Rioplex supports the Proposal's conclusion on wide-area licensing.⁴

Of particular note, Rioplex agrees with the protected overlap analysis provided at Appendix A to the Proposal . However, in adopting the so called "splitting the football" process,

² *A Proposal for Revising the MDS and ITFS Regulatory Regime*, Wireless Communications Association International, Inc, the National ITFS Association and the Catholic Television Network, RM-10586 (Oct. 7, 2002), p. 7.

³ *Id.* at 19.

⁴ *Id.* 19 - 22. In detailing licensing reforms, the Proposal repeats its finding that certain licensees should be permitted to construct and operate facilities within their areas without site-specific approval. Proposal at 23.

the Commission should ensure that licensees are provided with flexibility to negotiate an alternative solution to the simple chord between the two points of intersection. Licensees should be permitted to negotiate full use of their protected geographic areas with an overlapping licensee.

THE BANDPLAN PROPOSAL

Rioplex and others in the industry have developed telecommunications networks and broadband systems based upon current ITFS/MDS frequencies and the accompanying authorizations issued thereunder by the Commission. The current systems are meeting with success and, as extensively referenced by the Proposal, are being deployed throughout the nation.⁵ The Commission should commend the industry for its technological innovation and advancements rather than revoke their frequencies just as they are becoming successful. However, the Proposal's suggested bandplan would, through administrative action, revoke the licenses for certain MDS/ITFS channels and impose an entirely different channel plan upon license holders. The Proposal's attempt to rearrange deck chairs on a ship that is at long last seaworthy lives up to its self-description as "a radical reworking."⁶

Paramount among the faults in the suggested bandplan is the effect of eliminating licensee interests in long authorized frequencies. Many current 2 GHz broadband providers have built successful educational broadcasting networks as well as broadband networks using spectrum which was licensed by the Commission. Unfortunately, the first radical step of the suggested bandplan would be to revoke the channels and frequencies upon which these

⁵ Id. at fn. 18.

⁶ Id at 1

telecommunications and broadcast systems were built.⁷ Current licensees should be permitted to continue operating with the license and channels which were properly and originally issued to them.

The second step of imposing the suggested bandplan is even more radical. The suggested bandplan proposes to dole out frequencies to current license holders which more closely resemble a patchwork of spectrum than the licenses which the Commission first issued to license holders. Indeed, the suggested bandplan forces licensees to use spectrum in either the 2500 - 2566 or 2620 - 2686 band, more spectrum in the 2572 - 2614 band, another bit of spectrum in the 2686 - 2690 band and finally spectrum in Transitional Bands.⁸ Floundering about like a school child playing hopscotch, licensees would need to reevaluate their entire telecommunications systems and hope to redesign and redevelop networks using the new bandplan with frequencies strewn about the spectrum.⁹ This step would be punishingly difficult for many licensees.

Finally, having suggested the revocation of current channels and a patchwork of spectrum as a consolation prize, the Proposal further states that licensees would then be thrown into a broadband bazaar to see what they can salvage from their frequencies. The Proposal describes this bazaar as “an active secondary market in authorizations.”¹⁰ It is not clear how forcing all

⁷ See generally, Proposal at page 12 et seq. *describing* the “transition” which will be imposed upon current licensees.

⁸ Id. at 12.

⁹ The Proposal acknowledges that the suggested bandplan will impose some burdens upon current licensees but declares that “the contribution of spectrum to the Transition Band is a price that every licensee pays for maintaining flexibility.” Id. at 16, fn. 43.

¹⁰ Id. at 13.

licensees into this broadband bazaar would alleviate the concern raised in the Proposal of "the potential for uncooperative licensees to frustrate innovative service offerings."¹¹ Under the suggested bandplan, the pool of licensees who could wield this potential uncooperativeness would in no way change. Instead, the Proposal anticipates an active pool of licensees who, it can be inferred, are all potentially uncooperative. In that instance, innovative service offerings indeed would be frustrated and the Proposal's objectives would fail.

CONCLUSION

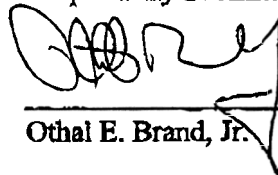
The regulatory reform objectives sought by the organizations submitting the Proposal in this matter are well intentioned. In execution, many of the methods for achieving those objectives, such as the migration away from site by site licensing, are easily recognizable as contributing to the reform and rational development of regulations for the ITFS and MDS industry. However, the suggested bandplan in the Proposal raises significant questions as to the administrative propriety of revoking channels from licensees as well as the practical issues surrounding the patchwork of replacement spectrum which would be issued to licensees. The suggested bandplan is not a feasible replacement of the current and historical system.

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Respectfully Submitted,


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¹¹ Id. at 15.